RECORD, CASE No. 14,769.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1891.

TERM No., ~~1295.~~

THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

C. S. MILLER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED JULY 24, 1891.

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1 In the Supreme Court of the United States.

C. S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before the Honorable Matthew P. Deady, one of you, between C. S. Miller, plaintiff and defendant in error, and The Eastern Oregon Gold Mining Company, Limited, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this June 18, 1891.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON,
Clerk of the Circuit Court of the United States for the District of Oregon,
By R. B. LAMSON,
Deputy Clerk.

[Endorsed:] In the Supreme Court of the United States. C. S. Miller *vs.* Eastern Oregon Gold Mining Co., Limited. Writ of error. Filed June 18, 1891. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

2 In the Supreme Court of the United States.

C. S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before the Honorable Matthew P. Deady, one of you, between C. S. Miller, plaintiff and defendant in error, and The Eastern Oregon Gold Mining Company, Limited, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this June 18, 1891.

R. H. LAMSON,
Clerk of the Circuit Court of the United States for the District of Oregon.
By R. B. LAMSON,
Deputy Clerk.

[Endorsed:] In the Supreme Court of the United States. C. S. Miller *vs.* Eastern Oregon Gold Mining Co., Limited. Writ of error.

Endorsed: Filed June 18, 1891. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

3 UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

To C. S. Miller, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within sixty days from this date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district

of Oregon, wherein The Eastern Oregon Gold Mining Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this 18th June, 1891.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

[Endorsed:] No. 1584. U. S. circuit court, district of Oregon. C. S. Miller *vs.* Eastern Oregon Gold Mining Co., Limited. Citation on writ of error. Filed June 19, 1891. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

DISTRICT OF OREGON, *ss:*

Due service acknowledged June 19th, 1891.

W. B. GILBERT,
Of Counsel for Plaintiff.

3½ *Return of Civil Process.*

UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

I hereby certify that on the 1st day of July, 1891, at Portland, Multnomah county, in said district, I duly served the within citation on writ of error upon the therein-named C. S. Miller by delivering to W. B. Gilbert, attorney for C. S. Miller, defendant in error, personally a true copy of said writ, duly certified to by me as U. S. marshal.

L. T. BARIN,
United States Marshal,
By O. P. MILLER, *Deputy.*

4 UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

To C. S. Miller, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within sixty days from this date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein The Eastern Oregon Gold Mining Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this 18th June, 1891.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

[Endorsed:] No. 1584. U. S. circuit court, district of Oregon. C. S. Miller *vs.* Eastern Oregon Gold Mining Co., Limited. Citation on writ of error.

(Endorsed:) Filed June 19, 1891. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

DISTRICT OF OREGON, *ss:*

Due service acknowledged June 19th, 1891.

W. B. GILBERT,
Of Counsel for Plaintiff.

4½ *Return of Civil Process.*

UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

I hereby certify that on the 1st day of July, 1891, at Portland, Multnomah county, in said district, I duly served the within citation on writ of error upon the therein-named C. S. Miller *and* by delivering to W. B. Gilbert, attorney for C. S. Miller, defendant in error, personally a true copy of said writ, duly certified to by me as U. S. marshal.

L. T. BARIN,
United States Marshal,
By O. P. MALLER, *Deputy.*

5 In the Circuit Court of the United States for the District of Oregon, April Term, 1889.

Be it remembered that on the 7th day of May, 1889, there was duly filed in the circuit court of the United States for the district of Oregon a complaint in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

The plaintiff for cause of action against the defendant complains and alleged—

That the plaintiff at all the times in this complaint mentioned was and still is a citizen of the State of Oregon, residing at the Dalles, in Wasco county, and that the defendant at all times in this complaint mentioned was and still is a foreign corporation, created under the laws of the United Kingdom of Great Britain and Ireland, having its registered office at London, in England, and was and is a subject of the Queen of said United Kingdom.

That on or about the 18th day of August, 1888, the said corporation duly issued certificates of its stock to Isaac Kaufman, who was then and now is a citizen and resident of the State of Oregon, in the

amount of thirty thousand shares, of the par value of one pound sterling each, and in the month of September, 1888, the said
6 Kaufman, for value received, duly assigned and transferred to the plaintiff six thousand of said shares, and delivered to the plaintiff the certificates for the same so issued by the defendant.

That at the time of receiving said shares the plaintiff was involved in debt, and said shares were the only property he possessed, and it became and was necessary for the plaintiff to sell and dispose of said stock.

That the value of said stock so assigned to the plaintiff was at the time it was so assigned and ever since has been par, or the face value of the shares, amounting in all to twenty-nine thousand and one hundred dollars.

That in the months of September, October, November, and December of 1888 and January and February, 1889, the plaintiff, being so obliged to sell and dispose of said stock, made diligent efforts so to do, and offered the same for sale in London, England, and, but for the wrongful acts of the defendant hereinafter complained of, could have sold the said stock for the par value of the same at any time during said period.

That the defendant wrongfully and without cause at all times during said period refused to recognize the validity of said transfer to the plaintiff of said shares of stock and refused to acknowledge the title of the plaintiff to the same or to permit any transfer of any of said shares so issued to Kaufman, and, although duly notified of the plaintiff's rights in the matter, openly denied Kaufman's right to transfer any of said shares to any one whatever.

That said shares were by the terms thereof transferable, and said transfers were in all respects made as required by
7 the law and the articles of association and rules and regulations of said defendant corporation, and owing solely to said wrongful conduct of the defendant and its officers the plaintiff was obliged to and did sell said shares in February, 1889, for the sum of five thousand dollars, that being the greatest sum that could be obtained therefor, and the plaintiff has been damaged and injured by said wrongful conduct of the defendant in the sum of twenty-four thousand dollars.

Wherefore the plaintiff demands judgment against the defendant for the sum of twenty-four thousand dollars and his costs and disbursements in this action.

GEARIN & GILBERT,
Attorneys for Plaintiff.

DISTRICT OF OREGON, *ss:*

I, Charles S. Miller, being duly sworn, say: I am the plaintiff above named, and that the foregoing complaint is true as I verily believe.

CHARLES S. MILLER.

Subscribed and sworn to before me this 7th day of May, 1889.

R. H. LAMSON, *Clerk,*
By R. B. LAMSON,
Deputy Clerk.

Endorsed: Filed May 7, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on the 7th day of May, 1889, there was issued out of said court a summons in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584. Summons.

8 The President of the United States to The Eastern Oregon Gold Mining Company, Limited, the above-named defendant, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Portland, in said district, and answer the complaint filed against you in the above-entitled action within ten days from the date of the service of this summons upon you, if served within the county of Multnomah, in said district, or, if served within any other county of said district, then within thirty days from the date of such service upon you; and if you fail so to appear and answer, for want thereof the plaintiff will take judgment against you for the sum of twenty-four thousand dollars and his costs and disbursements in this action; and this is to command you, the marshal of said district, or your deputy, to make due service and return of this summons. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, affixed at Portland, in said district, this 7th day of May, 1889.

[Seal of U. S. Circuit Court for the District of Oregon.]

R. H. LAMSON, *Clerk*,
By R. B. LAMSON,
Deputy Clerk.

Endorsed: Returned and filed May 8, 1889. R. H. Lamson, clerk.

Return.

DISTRICT OF OREGON, *ss:*

I certify that on the 7th day of May, 1889, at Portland, Or., Multnomah county, in said district, I duly served the within summons upon the therein-named Genel Bates, pres'd't, and J. Gilbert
9 Bowick, director of within-entitled Co., by delivering to each personally, a true copy of said summons, duly certified to by me as U. S. marshal, together with a copy of the complaint in the within-entitled cause, duly certified to by the clerk of the circuit court for said district.

JOHN MYERS,
United States Marshal,
By H. C. MYERS, *Deputy.*

And afterwards, to wit, on the 17th day of May, 1889, there was duly filed in said court a notice of special appearance of defendant, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

To Charles S. Miller, the above-named plaintiff, and to Messrs. Gearin & Gilbert, his attorneys:

You will please take notice that the defendant, The Eastern Oregon Gold Mining Company, Limited, hereby appears specially in this action by the undersigned, its attorneys, for the purpose of moving to set aside and vacate the service of the summons herein and for no other purpose.

EMMONS & EMMONS & C. F. HYDE,
Attorneys for Defendant.

STATE OF OREGON, *County of Multnomah,* } *ss:*

Due service of a copy of the above notice is hereby admitted this 17th day of May, 1889.

GEARIN & GILBERT,
Attorneys for Plaintiff.

Endorsed: Filed May 17, 1889. R. H. Lamson, clerk.

10 And afterwards, to wit, on the 17th day of May, 1889, there was duly filed in said court a motion to set aside service of summons, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Now comes the defendant and, appearing specially for the purposes of this motion and not otherwise, moves the court to vacate and set aside the service of summons in this action upon the ground that the defendant company is a foreign corporation and the alleged cause of action sued upon arose without the jurisdiction of this court and it does not appear from the complaint or from the return of the summons herein that at the time the cause of action alleged in the complaint arose or at any time thereafter said defendant either carried on business or had property within the jurisdiction of this court.

EMMONS & EMMONS & C. F. HYDE,
Attorneys for Defendant.

STATE OF OREGON,
County of Multnomah, } ss:

Due service of a copy of the above motion is hereby admitted this 17th day of May, 1889.

GEARIN & GILBERT,
Attorneys for Plaintiff.

Endorsed: Filed May 17, 1889. R. H. Lamson, clerk.

11 And afterwards, to wit, on the 20th day of May, 1889, there was duly filed in said court an affidavit of Charles S. Miller, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

UNITED STATES OF AMERICA,
District of Oregon, } ss:

I, Charles S. Miller, being first duly sworn, say on oath that I am personally acquainted with —— Bates, the president of the defendant, The Eastern Oregon Gold Mining Company, Limited, and with T. G. Bowick, director of said company; that both of said gentlemen are residents of London, England; that The Eastern Oregon Gold Mining Company, Limited, defendant in the above-entitled action, has property within the State of Oregon and is doing business therein, to wit, in Grant county, State of Oregon; that said Eastern Oregon Gold Mining Company, Limited, defendant above named, is the owner of what is known as the Monumental mine and mill property, situated in said Grant county, Oregon; that said Bates, president, and said Bowick, a director, as aforesaid, of said defendant, The Eastern Oregon Gold Mining Company, Limited, on their late visit to the State of Oregon, where service in this action was had upon them, came in the interest of said defendant, The
12 Eastern Oregon Gold Mining Company, Limited, and they looked after, cared for, and directed in the management and control of said property and of no other property; that I had a conversation with them shortly before the bringing of this suit, in Baker City, Oregon, when they returned from visiting the mine, and they told me in that conversation that they had been out to look at the property and were satisfied with it; that the property now stands in the name of one Wm. E. Parsons, who is holding the same in trust for said defendant company above named until patent is issued from the Government of the United States for the same; that said Bates and said Bowick are large stockholders in said defendant corporation above named, and that the stock upon which action is brought in this case was purchased by and is now

owned by said defendant corporation, the purchase being made through their officers and directors.

That said defendant corporation above named was organized on or about the — day of June, 1888, for the purpose of handling said property within the State of Oregon and for no other purpose, and since its organization has been engaged in handling of said property by and through its directors and president in London, and in Oregon acting by and through its agents here.

That said defendant, The Eastern Oregon Gold Mining Company, Limited, owns no other property whatever except said Monumental mine and mill property, in Grant county, Oregon, above referred to, and has no other business except operating said mine and dealing in the stock of said company, and that said president, Bates, came to Oregon, and within the jurisdiction of this court, in his official capacity as president of said company, and to
13 control and direct in Oregon the management of the property thereof; that Grant county is within the jurisdiction of this court.

CHARLES S. MILLER.

Subscribed and sworn to before me this 20th day of May, 1889.

[SEAL.] GEO. A. BRODIE,
Notary Public for Oregon.

Service of a copy of the foregoing affidavit is admitted this 20th day of May, 1889.

EMMONS & EMMONS,
Attorneys for Defendant.

Endorsed: Filed May 20, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on Friday, the 24th day of May, 1889, the same being the 25th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

MAY 24, 1889.

Now, at this day, this cause comes on to be heard upon the motion of the defendant to set aside the service herein, and was argued by Mr. John M. Gearin, of counsel for the plaintiff, and by Mr. A. C. Emmons, of counsel for the defendant. On consideration whereof it is ordered that said motion be, and the same is hereby, denied, and that said defendant have five days from this date in which to plead to or answer said complaint.

14 And afterwards, to wit, on the 25th day of May, 1889, there was duly filed in said court an amended complaint in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

The plaintiff, by this his amended complaint, by leave of court filed, complaining of the defendant, alleges—

That the plaintiff at all the times in this amended complaint mentioned was and still is a citizen of the State of Oregon, residing at the Dalles, in Wasco county, and that the defendant at all times in this complaint mentioned was and still is a foreign corporation created under the laws of the United Kingdom of Great Britain and Ireland, having its resistered office at London, in England, and was and is a subject of the Queen of said United Kingdom.

That said defendant has property in the State of Oregon, to wit, in Grant county, State of Oregon, and within the jurisdiction of this court, and is and during all the times mentioned in this complaint has been carrying on business in said Grant county, Oregon, and is and during all the times herein mentioned has been an inhabitant of the State of Oregon.

That on or about the 18th day of August, 1888, the said corporation duly issued certificates of its stock to Isaac Kaufman,
15 who was then and is now a citizen and resident of the State of Oregon, in the amount of thirty thousand shares of the par value of one pound sterling each, and in the month of September, 1888, the said Kaufman, for value received, duly assigned and transferred to the plaintiff six thousand of said shares and delivered to the plaintiff the certificates for the same so issued by the defendant, and duly authorized plaintiff to have said certificates of stock properly transferred to plaintiff on the stock books of said corporation and duly notified defendant of said transfer to plaintiff, and authorized and directed defendant to accept said certificates of defendant as transferred to plaintiff and issue in lieu thereof certificates of like amount to plaintiff or to whomsoever plaintiff might assign the same.

That at the time of receiving said shares the plaintiff was involved in debt, and said shares were the only property he possessed, and it became and was necessary for the plaintiff to sell and dispose of said stock.

That the value of said stock so assigned to the plaintiff was at the time it was so assigned and ever since has been par or the face value of the shares, amounting in all to twenty-nine thousand one hundred dollars.

That in the months of September, October, and November and December of 1888 and January and February, 1889, the plaintiff, being so obliged to sell and dispose of said stock, made diligent

efforts so to do, and offered the same for sale in London, England, and but for the wrongful acts of the defendant hereinafter complained of could have sold the said stock for the par value of the same at any time during said period.

16 That the defendant wrongfully and without cause at all times during said period refused to recognize the validity of said transfer to the plaintiff of said shares of stock and refused to acknowledge the title of the plaintiff to the same or to permit any transfer of any of said shares so issued to Kaufman, and, although duly notified of the plaintiff's rights in the matter, openly denied Kaufman's right to transfer any of said shares to any one whatever.

That plaintiff during said period of time frequently applied to defendant for a transfer of said stock, and that defendant refused to transfer the same or issue new certificates to plaintiff, and caused it to be circulated in the stock boards and among people dealing in this character of securities that this particular block of stock so transferred by said Kaufman to this plaintiff would not be transferred on the books of said company to plaintiff or to any one to whom plaintiff sold the same.

That said shares were by the terms thereof transferrable, and said transfers were in all respects made as required by the law and the articles of association and rules and regulations of said defendant corporation, and, owing solely to said wrongful conduct of the defendant and its officers, while other stock of said corporation remained at par these particular shares were not saleable in the market generally at any price, and the plaintiff was obliged to and did sell said shares in February, 1889, for the sum of five thousand dollars to parties purchasing for and on account of defendant, that being the greatest sum that could be obtained therefor, and

17 the plaintiff has been damaged and injured by said wrongful conduct of the defendant in the sum of twenty-four thousand dollars.

Wherefore the plaintiff demands judgment against the defendant for the sum of twenty-four thousand dollars and his costs and disbursements in this action.

GEARIN & GILBERT,
Attorneys for Plaintiff.

DISTRICT OF OREGON, *ss:*

I, Charles S. Miller, being duly sworn, say I am the plaintiff above named, and that the foregoing complaint is true, as I verily believe.

CHARLES S. MILLER.

Subscribed and sworn to before me this 25th day of May, 1889.
[SEAL.] GEO. A. BRODIE,
Notary Public for Oregon.

DISTRICT OF OREGON, *ss:*

Due service of the foregoing amended complaint is hereby admitted, at Portland, Multnomah county, Oregon, in said district, on

this 25th day of May, 1889, together with receipt of duly certified copy thereof, certified by Jno. M. Gearin, one of plaintiff's attorneys.

EMMONS & EMMONS,
Attorneys for Defendant.

Endorsed: Filed May 25, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on the 30th day of May, 1889, there was duly filed in said court a demurrer to the amended complaint in words and figures as follows, to wit:

18 In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Now comes the defendant and demurs to the amended complaint filed by the plaintiff herein for the reason that it appears upon the face thereof:

I. That the court has no jurisdiction of the person of the defendant or the subject of the action.

II. That the said amended complaint does not state facts sufficient to constitute a cause of action.

EMMONS & EMMONS & C. F. HYDE,
Attorneys for Defendant.

DISTRICT OF OREGON, *ss:*

Due service of a certified copy of the above motion is hereby admitted this 29th day of May, 1889.

GEARIN & GILBERT,
Attorneys for Plaintiff.

Endorsed: Filed May 30, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on Thursday, the 3rd day of June, 1889, the same being the 28th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said cause, to wit:

19 In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 3, 1889.

Now, at this day, comes the plaintiff, by Mr. John M. Gearin, of

counsel, and the defendant, by Mr. A. C. Emmons, of counsel, and, on motion of said plaintiff, it is ordered that this cause be, and the same is hereby, set for hearing on the demurrer to the amended complaint on Friday, June 7, 1889.

And afterwards, to wit, on Friday, the 7th day of June, 1889, the same being the 34th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 7, 1889.

Now, at this day, on motion of Mr. A. C. Emmons, of counsel for the defendant, it is ordered that the hearing of this cause upon the demurrer to the amended complaint be, and the same is hereby, continued for the term.

And afterwards, to wit, on Tuesday, the 19th day of June, 1889, the same being the 42nd judicial day of the regular April term said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 19, 1889.

Now, at this day, on motion of Mr. A. C. Emmons, of counsel for the defendant, it is ordered that said defendant be allowed to withdraw its demurrer heretofore filed herein, and that it have twenty days from this date to file a plea in abatement herein.

And afterwards, to wit, on the 8th day of July, 1889, there was duly filed in said court a plea in abatement in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Plea in Abatement.

The defendant, for answer to the amended complaint of the

this 25th day of May, 1889, together with receipt of duly certified copy thereof, certified by Jno. M. Gearin, one of plaintiff's attorneys.

EMMONS & EMMONS,
Attorneys for Defendant.

Endorsed: Filed May 25, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on the 30th day of May, 1889, there was duly filed in said court a demurrer to the amended complaint in words and figures as follows, to wit:

18 In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Now comes the defendant and demurs to the amended complaint filed by the plaintiff herein for the reason that it appears upon the face thereof:

I. That the court has no jurisdiction of the person of the defendant or the subject of the action.

II. That the said amended complaint does not state facts sufficient to constitute a cause of action.

EMMONS & EMMONS & C. F. HYDE,
Attorneys for Defendant.

DISTRICT OF OREGON, *ss:*

Due service of a certified copy of the above motion is hereby admitted this 29th day of May, 1889.

GEARIN & GILBERT,
Attorneys for Plaintiff.

Endorsed: Filed May 30, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on Thursday, the 3rd day of June, 1889, the same being the 28th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said cause, to wit:

19 In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 3, 1889.

Now, at this day, comes the plaintiff, by Mr. John M. Gearin, of

counsel, and the defendant, by Mr. A. C. Emmons, of counsel, and, on motion of said plaintiff, it is ordered that this cause be, and the same is hereby, set for hearing on the demurrer to the amended complaint on Friday, June 7, 1889.

And afterwards, to wit, on Friday, the 7th day of June, 1889, the same being the 34th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 7, 1889.

Now, at this day, on motion of Mr. A. C. Emmons, of counsel for the defendant, it is ordered that the hearing of this cause upon the demurrer to the amended complaint be, and the same is hereby, continued for the term.

20 And afterwards, to wit, on Tuesday, the 19th day of June, 1889, the same being the 42nd judicial day of the regular April term said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 19, 1889.

Now, at this day, on motion of Mr. A. C. Emmons, of counsel for the defendant, it is ordered that said defendant be allowed to withdraw its demurrer heretofore filed herein, and that it have twenty days from this date to file a plea in abatement herein.

And afterwards, to wit, on the 8th day of July, 1889, there was duly filed in said court a plea in abatement in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant. }

Plea in Abatement.

The defendant, for answer to the amended complaint of the

plaintiff herein, admits that the plaintiff, at all the times
21 in his amended complaint mentioned, was and still is a citizen of the State of Oregon, residing at The Dalles, in Wasco county, and that the defendant, at all times in his amended complaint mentioned, was and still is a foreign corporation, created under the laws of the United Kingdom of Great Britain and Ireland, having its registered office at London, in England, and was and is a subject of the Queen of said United Kingdom.

But this defendant denies that it is now or during all or any of the times mentioned in said amended complaint or at any time has been an inhabitant of the State of Oregon.

And this defendant alleges that it now is and at all the times in plaintiff's amended complaint mentioned was an inhabitant of the city of London, England, and no other place.

Wherefore defendant asks to be dismissed hence without day, and that it have judgment for its costs and disbursements incurred herein.

EMMONS & EMMONS,
Attorneys for Defendant.

DISTRICT OF OREGON, *ss:*

I, R. W. Emmons, being first duly sworn, say that I am the agent and one of the attorneys for defendant and make this verification for the reason that there is no officer of the defendant within this district; that the foregoing answer is true as I verily believe.

R. W. EMMONS.

Subscribed and sworn to before me this 8th day of July, 1889.
[SEAL.] A. C. EMMONS,
Notary Public for Oregon.

DISTRICT OF OREGON, *ss:*

Due service of the foregoing plea in abatement is hereby admitted this 8th day of July, 1889.

GEARIN & GILBERT,
Attorneys for Plaintiff.

Endorsed: Filed July 8, 1889. R. H. Lamson, clerk.

22 And afterwards, to wit, on the 12th day of July, 1889, there was duly filed in said court a demurrer to plea in abatement in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Now comes the plaintiff, by Gearin & Gilbert, his attorneys, and demurs to the answer by way of plea in abatement by the defendant

filed herein for the reason that the same does not contain matter sufficient to constitute a defense to the complaint herein or to abate the same.

GEARIN & GILBERT,
Attorneys for the Plaintiff.

Service of the above demurrer is admitted this July 9, 1889.
EMMONS & EMMONS.

Endorsed: Filed July 12, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on Friday, the 12th day of July, 1889, the same being the 51st judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

23 In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JULY 12, 1889.

Now, at this day, on motion of Mr. John M. Gearin, of counsel for the plaintiff, it is ordered that this cause be, and the same is hereby, set for hearing upon the demurrer to the plea in abatement on Monday, July 15, 1889.

And afterwards, to wit, on Wednesday, the 20th day of November, 1889, the same being the 26th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

NOVEMBER 20, 1889.

This cause was heard upon the demurrer to the plea in abatement of the defendant, and was argued by Mr. William B. Gilbert, of counsel for the plaintiff, and by Mr. Arthur C. Emmons, of counsel for the defendant; on consideration whereof, it is ordered that said demurrer be, and the same is hereby, sustained, and that said defendant be, and it is hereby, allowed five days from this date in which to answer or plead to the complaint herein.

24 And afterwards, to wit, on the 23rd day of November, 1889, there was duly filed in said court a stipulation allowing further time to answer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

It is hereby stipulated by and between the parties to the above-entitled action that the defendant may have until the 29th day of November, 1889, in which to further plead herein.

Dated this 23rd day of November, 1889.

GEARIN & GILBERT,
Attorneys for Plaintiff.
EMMONS & EMMONS,
Attorneys for Defendant.

Endorsed: Filed Nov. 23, 1889. R. H. Lamson, clerk.

And afterwards, to wit, on the 4th day of December, 1889, there was duly filed in said court an answer of defendant in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

The defendant above named, for answer to the amended
25 complaint of plaintiff herein—

Admits that on or about the 18th day of August, 1888, the said corporation duly issued certificates of its stock to Isaac Kaufman, who was then and is now a citizen and resident of the State of Oregon, in the amount of thirty thousand shares of the par value of one pound sterling each, but denies any knowledge or information sufficient to form a belief as to whether or not, in the month of September, 1888, or at any other time, said Kaufman, for value received, duly assigned or otherwise assigned or transferred to the plaintiff six thousand or any of said shares or delivered to the plaintiff the certificates for the same so or otherwise issued by the defendant.

Defendant denies that said Kaufman duly or otherwise authorized plaintiff to have said or any of said certificates of stock properly or otherwise transferred to plaintiff on the stock books of said corporation, except as hereinafter alleged.

Defendant denies that said Kaufman duly or otherwise notified defendant of said transfer to plaintiff or authorized or directed de-

fendant to accept said certificates of defendant as transferred to plaintiff or issue in lien thereof certificates of like amount to plaintiff or to whomsoever plaintiff might assign ths same.

Defendant denies any knowledge or information sufficient to form a belief as to whether or not at the time of receiving said shares or at any other time the plaintiff was involved in debt, or that said shares were the only property he possessed, or that it became or was necessary for the plaintiff to sell or dispose of said stock or any of it.

26 Defendant denies that the value of said stock alleged to have been assigned to the plaintiff was at the time it was so or otherwise assigned or ever or at any time since has been par or the face value of the shares or amounting in all to twenty-nine thousand one hundred dollars, or that the value of said stock was at the time it is alleged by plaintiff to have been assigned to him or at any time since of any greater value that one-sixth of the par or the face value of the said shares, or amounting in all to the sum of five thousand dollars.

Defendant denies any knowledge or information sufficient to form a belief as to whether or not, in the months of September, October, November, and December of 1888, and January and February, 1889, or at any time the plaintiff, being so or otherwise obliged to sell or dispose of said or any of said stock, made diligent or any efforts so to do or offered the same or any of said stock for sale in London, England, or elsewhere.

Defendant denies that but for the wrongful acts of the defendant complained of in plaintiff's complaint or on account of any wrongful act or acts of defendant said plaintiff could have sold the said or any of said stock for the par value of the same or for any sum greater than one-sixth of the par or face value thereof at any time during said period or at any time since the same is alleged to have been assigned to plaintiff in his complaint.

Defendant denies that it wrongfully or without cause at all or any time during said or any period refused to recognize the validity of said transfer to the plaintiff of said or any of said shares of

27 stock or refused to acknowledge the title of the plaintiff to the same or to permit any transfer of said or any of said shares so issued to said Kaufman.

Defendant denies that it caused it to be circulated in the stock boards or among people dealing in this or any character of securities or elsewhere or at all that this or any particular block of stock or any stock so or otherwise transferred by said Kaufman to this plaintiff would not be transferred on the books of said company to plaintiff or to any one to whom plaintiff sold the same.

Defendant denies that said shares were by the terms thereof transferrable, except under the memorandum and articles of association under which they were issued, or that said alleged transfers were in all or any respects made as required by the law of the articles of association or rules or regulations of said defendant corporation, or that owing solely or at all to said or any wrongful conduct of the defendant or its officers while other stock of said corporation

remained at par these particular shares were not saleable in the market generally at any price.

Defendant denies any knowledge or information sufficient to form a belief as to whether or not the plaintiff was obliged to or did sell said or any of said shares in February, 1889, for the sum of five thousand dollars or for any other sum, or that said sum was the greatest sum that could be obtained therefor.

Defendant denies that plaintiff sold said or any of said shares of stock to parties purchasing the same for or on account of defendant, or that the plaintiff has been damaged or injured by
28 said alleged or any wrongful conduct of the defendant in the sum of twenty-five thousand dollars or in any sum whatever.

Defendant, further answering plaintiff's complaint and for and as a defense to the alleged cause of action set forth, alleges as follows:

That the defendant issued the certificates of stock mentioned in plaintiff's complaint to said Isaac Kaufman in part payment of the purchase price of two certain gold and silver mines, situate in Grant county, State of Oregon, and known as "Monumental No. 1" and "Monumental No. 2;" that one of the conditions of the sale of said mines to defendant was that said defendant should receive a good and sufficient deed to the same conveying to it the title to said mines in fee simple and free from all incumbrances; that said stock was issued to said Kaufman upon the express understanding that the same should not be transferable by him until after all the conditions of said sale were complied with; that plaintiff received the stock assigned and transferred to him by said Isaac Kaufman, as set forth in his complaint, with full notice and knowledge of the terms upon which said stock was issued to said Kaufman, and well knew at the time he received the same that it was not transferable until a good and sufficient deed conveying to defendant the title to said mines in fee simple and free from all incumbrances had been made.

That a good and sufficient deed conveying the title to said mines in fee simple to defendant, free from all incumbrances, was not made or delivered to the defendant until after the commencement of this action.

That at the time said Isaac Kaufman assigned and trans-
29 ferred said shares to plaintiff the said Isaac Kaufman was and continued to be until after the commencement of this action under liability to defendant, namely, to make or cause to be made to defendant a good and sufficient deed conveying the title to said mines in fee simple and free from all incumbrances.

That under the articles of association and rules and regulations of said defendant corporation it is authorized to decline to register any transfer of shares made by any member jointly or alone indebted or under any liability to said corporation without assigning any reason therefor.

Wherefore this defendant prays that it may go hence without day and may recover from the plaintiff its costs and disbursements in this behalf sustained.

EMMONS & EMMONS,
Attorneys for Defendant.

DISTRICT OF OREGON, *ss:*

I, R. W. Emmons, being first duly sworn, say that I am the agent and one of the attorneys for the defendant, and make this verification for the reason that none of the officers of the defendant corporation are within this county and capable of making the same; that the foregoing answer is true, as I verily believe.

R. W. EMMONS.

Subscribed and sworn to before me this 3rd day of December, 1889.

[SEAL.] A. C. EMMONS,
Notary Public for Oregon.

Service by copy admitted at Porland, Or., December 3rd, 1889.
W. B. GILBERT,
Of Attorneys for Plaintiff.

Endorsed: Filed December 4, 1889. R. H. Lamson, clerk.

30 And afterwards, to wit, on the 3rd day of January, 1890, there was duly filed in said court a reply in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Plaintiff, for reply to the answer of defendant herein filed, denies that one of the conditions of the sale of said mines to defendant was that said defendant should receive a good and sufficient or any deed to the same conveying to it the title to said mines in fee simple, free from all incumbrances, or any deed, except as herein stated; and plaintiff alleges the fact in regard thereto to be that said mines, "Monumental No. 1 and Monumental No. 2," were sold to defendant by one T. Gilbert Bowick, under a contract that he, said Bowick, would procure from said company a good and sufficient deed conveying title to said property or would put said company in possession of said mines.

That said T. Gilbert Bowick did thereupon and long prior to the doing of the acts complained of by plaintiff, to wit, about the 1st day of October, 1888, duly put said company in possession of said mines, and they have been so in possession ever since.

Denies that said stock was issued to said Kaufman upon the express or any understanding that the same should not be
31 transferable by him until after all the conditions of said sale were complied with, or upon any condition whatever, except as stock is usually issued by such companies and corporations. Denies that plaintiff received the stock assigned or transferred by said Isaac Kaufman, as set forth in his complaint, with full or any

notice or knowledge of the terms upon which said stock was issued to said Kaufman or with notice or knowledge of any restraint upon the transferring of said stock. Denies that the plaintiff knew at the time he received the same that it was not transferable until a good and sufficient deed conveying to defendant the title to said mines in fee simple, free from all incumbrances, had been made, or that it was not transferable at all, except as stock is usually transferable according to law; that as to whether or not a good or sufficient deed conveying the title to said mines in fee simple to defendant, free from all incumbrances, was not made or delivered to defendant until after the commencement of this action, plaintiff has no knowledge or information sufficient to form a belief, and therefore denies the same; that as to whether or not at the time said Isaac Kaufman assigned or transferred said shares to plaintiff the said Isaac Kaufman was or continued to be until after the commencement of this action or until any time under liability to defendant, namely, to make or cause to be made to defendant a good or sufficient deed conveying the title to said mines in fee simple or otherwise, or free from all incumbrances or at all, or under any liability, plaintiff has no knowledge or information sufficient to form a belief. Denies

32 that under the articles of association or rules or regulations of said defendant corporation it is authorized to decline to register any transfer of shares made by any member jointly or alone indebted or under any liability to said corporation without assigning any reason therefor.

Wherefore plaintiff demands judgment as prayed for in his complaint herein.

GEARIN & GILBERT,
Attorneys for Plaintiff.

Due service of the foregoing reply is this day admitted.

EMMONS & EMMONS,
Attorneys for Defendant.

DISTRICT OF OREGON, *ss:*

I, C. S. Miller, being first duly sworn, say that I am the plaintiff above named, and that the foregoing reply is true, as I verily believe.

CHARLES S. MILLER.

Subscribed and sworn to before me this 23rd day of December, 1889.

[SEAL.] GEO. A. BRODIE,
Notary Public for Oregon.

Endorsed: Filed January 3, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on the 3rd day of January, 1890, there was duly filed in said court a stipulation as to certain facts in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

It is hereby stipulated and agreed by and between the
33 respective parties in the above-entitled action that one of the "articles of association" of defendant above named is as follows:

"The directors may, without assigning any reason, decline to register any transfer of shares made by any member jointly or alone indebted or under any liability to the company."

It is further stipulated that the defendant did refuse to transfer the shares of stock described in plaintiff's complaint, and that an assignment of said shares was demanded of defendant.

JNO. M. GEARIN & W. B. GILBERT,
Attorneys for Plaintiff.
EMMONS & EMMONS,
Attorneys for Defendant.

Endorsed: Filed January 3, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on the 28th day of February, 1890, there was duly filed in said court a stipulation for taking of depositions in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

It is hereby stipulated by and between the respective parties to the above-entitled action that letters rogatory issue out of the above court in the above-entitled action, directed to the superior
34 court of judicature of England, probate division, or to any court of competent jurisdiction in England, to compel the attendance of witnesses, to take the testimony of Gilbert Spurling and James Skinner, Jr., of 2 Tokenho building, King's Arms Yard, E. C., London, England, and James Tyhurst, of Founder's Court, London, E. C., witnesses on behalf of plaintiff, and such witnesses on behalf of defendant as may be desired by defendant, and the interrogatories to whom, direct and cross, shall be attached to said letters rogatory previous to sending same to said witnesses on behalf of the defendant, and that such testimony so taken may be received and read on the trial of the above-entitled action in this court and

have the same effect and be entitled to the same credit as if given in open court on the trial.

February 28, 1890.

GEARIN & GILBERT,
Att'ys for Plaintiff.
EMMONS & EMMONS,
Attorneys for Defendant.

Endorsed: Filed February 28, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 28th day of May, 1890, the same being the 22nd judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

MAY 28, 1890.

Now, at this day, on motion of Mr. John M. Gearin, of
35 counsel for the plaintiff, it is ordered that this cause be, and the same is hereby, set for trial on Tuesday, June 10, 1890.

And afterwards, to wit, on Monday, the 9th day of June, 1890, the same being the 31st judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 9, 1890.

Now, at this day, this cause comes on to be heard upon the motion to set aside the order setting this cause for trial, and was argued by Mr. W. B. Gilbert, of counsel for the plaintiff, and by Mr. A. C. Emmons, of counsel for the defendant; on consideration whereof, it is ordered that said motion be, and the same is hereby, allowed.

And afterwards, to wit, on the 11th day of June, 1890, there was duly filed in said court a notice to set for trial in words and figures as follows, to wit:

36 In the Circuit Court of the United States for the District of Oregon.

CHAS. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

To the above-named defendant and to Messrs. Emmons & Emmons, its attorneys:

You will please take notice that upon Wednesday morning, June 18, 1890, upon the coming in of court, or as soon thereafter as plaintiff can be heard, plaintiff will apply in the above-entitled court for an order setting the above-entitled case down for trial.

W. B. GILBERT AND JNO. M. GEARIN,
Pl'ff's Att'ys.

Due service of the above admitted June 11, 1890.
EMMONS & EMMONS.

Endorsed: Filed June 11, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on the 16th day of June, 1890, there was duly filed in said court a motion to suppress depositions in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Now comes the defendant and moves the court to suppress the depositions of James Skinner, Jr., Gilbert Spurling, and James Tyhurst, filed herein, for the following reasons, namely:

37 1. It does not appear that the testimony was taken down in writing by the person before whom the said witnesses appeared.

2. Said depositions are not taken, certified, and returned in the manner required by the practice of this court.

3. Said witnesses were not cautioned and sworn to testify the whole truth and carefully examined.

4. Said depositions were not returned by the court to which the letters rogatory were sent to minister or consul of the United States nearest the place where it was executed.

5. Said depositions do not appear to have been taken in accordance with the stipulation under which the said letters rogatory were issued.

6. The person before whom said depositions were taken does not appear to have been authorized or commissioned by this or any other court to take said depositions.

7. It does not appear that the person before whom said deposi-

tions were taken was a competent person to take the said depositions, or that he was appointed, authorized, or empowered to administer oaths to said witnesses.

EMMONS & EMMONS,
Attorneys for Defendant.

Service by copy admitted at Portland, Or., June 16, 1890.
W. B. GILBERT,
Attorney for Plaintiff.

Endorsed: Filed June 16, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 18th day of June, 1890, the same being the 35th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

38 In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 18, 1890.

Now, at this day, comes the plaintiff, by Mr. W. B. Gilbert, of counsel, and the defendant, by Mr. A. C. Emmons, of counsel, and, on motion of said defendant, it is ordered that this cause be, and the same is hereby, set for hearing on the motion to suppress the depositions taken herein on Monday, June 23, 1890.

And afterwards, to wit, on Monday, the 23rd day of June, 1890, the same being the 36th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 23, 1890.

Now, at this day, comes the plaintiff, by Mr. John M. Gearin, of counsel, and the defendant, by Mr. A. C. Emmons, of counsel, and, on motion of said plaintiff, it is ordered that this cause be, and the same is hereby, set for trial on Monday, June 30, 1890.

39 And afterwards, to wit, on Friday, the 27th day of June, 1890, the same being the 40th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady,

United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

CHARLES S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JUNE 27, 1890.

This cause was heard on the motion of the defendant to suppress the depositions taken herein, and was argued by Mr. John M. Gearin, of counsel for the plaintiff, and by Mr. A. C. Emmons, of counsel for the defendant; on consideration whereof it is ordered that said motion be, and the same is hereby, denied.

And afterwards, to wit, on the 2nd day of July, 1890, there was duly filed in said court a notice to produce papers in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

To the above-named defendant and to Messrs. Emmons &
40 Emmons, its attorneys:

You are hereby notified to produce and have in court at the trial of the above-entitled action the power of attorney executed by Isaac Kaufman to James W. Going, of date about November 12, 1888, for the sale and transfer of six thousand shares of stock in the Eastern Oregon Gold Mining Company, Limited, which shares stood in the name of said Isaac Kaufman on the books of said company and which power of attorney is now in your possession.

JNO. M. GEARIN & W. B. GILBERT,
Pl'ff's Att'ys.

Due service of the foregoing notice is admitted, in Multnomah Co., Oregon, this 21st day of March, 1890.

EMMONS & EMMONS.

Endorsed: Filed July 2, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 2nd day of July, 1890, the same being the 43rd judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JULY 2, 1890.

Now, at this day, comes the plaintiff, by Mr. John M. Gearin and Mr. W. B. Gilbert, of counsel, and the defendant, by Mr. Frank V. Drake and Mr. A. C. Emmons, of counsel, and, this being the day set for the trial of this cause, now come the following-named
41 jurors to try the issue joined, viz., J. S. Hibbs, James Agee, R. Snyder, J. S. Nye, Samuel Heitshu, J. T. Gowdy, George L. Gilfray, John Tait, R. J. Morrison, Noah Heater, Isaac Ham, and A. Sommer, twelve good and lawful men of the district, who, being duly empanelled and sworn, and, having heard the evidence adduced, the arguments of counsel, and the instructions of the court, retire in charge of proper sworn officers to consider of their verdict, and after being out a short time, return into court the following verdict, viz: "We, the jury in the above-entitled cause, find for the plaintiff and assess his damages at twenty-four thousand dollars, together with legal interest thereon, at eight per cent. per annum, from the 29th day of February, 1889—Samuel Heitshu, foreman;" which verdict is received by the court and ordered to be filed; and thereupon the plaintiff moves the court for judgment upon said verdict; which motion is allowed. It is therefore considered that the plaintiff do have and recover of and from said defendant the sum of twenty-four thousand dollars, with interest from February 29, 1889, at the rate of eight per cent. per annum, and also his costs and disbursements herein, taxed at three hundred and twenty dollars and forty-eight cents.

41½ And afterwards, to wit, on the 2d day of July, 1890, there was duly filed in said court a verdict in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

We, the jury in the above-entitled cause, find for the plaintiff and assess his damages at twenty-four thousand dollars, together with legal interest thereon, at 8 per cent. per annum, from the 29th day of February, 1889.

SAMUEL HEITSHU, *Foreman.*

Endorsed: Filed July 2, 1890. R. H. Lamson, clerk.

And afterwards, to wit, on the 3d day of July, 1890, there was duly filed in said court a cost bill of plaintiff in words and figures as follows, to wit:

42 In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

Statement of Disbursements Claimed in the Above-Entitled Cause, viz:

Clerk's fees	$21 20
Marshal's fees	13 68
Attorney's fee	20 00
Witness fees, 3 witnesses	5 10
Expense of taking testimony of Gilbert Spurling, James Tyhurst, and James Skinner, Jr., in London, England, under letters rogatory, and witness fees	260 50
Total	$320 48

DISTRICT OF OREGON, *ss:*

I, C. S. Miller, being duly sworn, say I am the plaintiff in the above-entitled cause; that the costs and disbursements set forth above have been necessarily incurred in the prosecution of this suit, and that pl'ff is entitled to recover the same from the defendant.

C. S. MILLER.

Subscribed and sworn to before me this 3rd day of July, 1890.

R. H. LAMSON, *Clerk.*

Endorsed: Filed July 3, 1890. R. H. Lamson, clerk.

43 And afterwards, to wit, on Friday, the 11th day of July, 1890, the same being the 47th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED. } No. 1584.

JULY 11, 1890.

Now, at this day, comes the plaintiff, by Mr. W. B. Gilbert, of counsel, and the defendant, bysMr. A. C. Emmons, of counsel, and, on motion of said defendant, it is ordered that defendant be, and it is hereby, allowed twenty days from this date in which to file a bill of exceptions herein.

And afterwards, to wit, on the 9th day of Oct., 1890, there was duly filed in said court a bill of exceptions in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING CO., LIMITED, Defendant.

Be it remembered that the issues in this action came on for trial in the above-entitled court—Hon. M. P. Deady, one of the jus-
44 tices of said court, presiding—at the regular April term of said court, on the 2nd day of July, A. D. 1890, John M. Gearin and W. B. Gilbert appearing as attorneys for the plaintiff and A. C. Emmons and Frank V. Drake as attorneys for defendant.

A jury was called and sworn, and plaintiff, to maintain the issues on his behalf, offered in evidence the depositions of James Skinner, Gilbert Spurling, and James Tyhurst.

And in the deposition of said GILBERT SPURLING said witness testified, in substance, as follows:

"My name is Gilbert Spurling; age, 36; reside in London; by occupation, stock and share broker, and am a member of the firm of Spurling and Skinner; was engaged in such business in the months of December, 1888, and January and February, 1889. During all that time the firm of Spurling and Skinner were acting as brokers for Brown, Shipley & Co. My firm during that time had six thousand shares in the Eastern Oregon Gold Mining Company, standing in the name of Isaac Kaufman, placed in their hands for disposal by Brown, Shipley & Co. I have no personal knowledge as to what was done in relation to said shares, but my partner, who is here, has. My partner, on the 12th of January, 1889, sold ten of said shares at one pound per share, and delivered the transfer deed therefor and the certificates to the buyer. My firm attempted to have said shares transferred on the books of the company, but the company refused to accept the transfer deed from the buyer. If the Eastern Oregon Gold Mining Company had consented to transfer these ten shares of stock on its books I could have delivered the ten shares and could have been paid the price they sold for. I can-
not give any information as to the value of the shares in the
45 Eastern Oregon Gold Mining Company in December, 1888, and January and February, 1889. The only sale of said stock during said period of which I have any knowledge was ten shares on the 12th of January, 1889. There was a market for these shares in Paris, and, from the price paid for the ten shares, they must have been at about one pound per share. My firm sold ten of said six thousand shares, as above named, to Rudge & Co. for ten pounds, but they did not sell any more of the shares. I have no knowledge as to whether the purchaser of said shares was a director of the Eastern Oregon Gold Mining Company, but they were transferred to a partner in Rudge & Company."

To cross-interrogatories the witness testified as follows:

"The six thousand shares of the Eastern Oregon Gold Mining Company were placed in the hands of my firm by Brown, Shipley

& Co. for disposal during the months of December, 1888, and January and February, 1889; but I cannot state the day of the week nor the month in which they were so placed, nor the time for which my firm held the same. Isaac Kaufman was the owner of said shares at the time they were placed in the hands of the firm and remained the owner during all the time we held the same. Said shares were ordinary shares and were registered share certificates.

"I say that my firm sold ten of said shares on the 12th of January, 1889, to Rudge & Co. for ten pounds, but the money was not actually received. They were not sold in the ordinary course of business, but subject to registration of the deed of transfer by the company. It is not a fact that the shares so sold were sold for the purpose of fixing the value of them; no money was in fact
46 ever paid for them, merely because the company refused to register the deed of transfer. On or about the 14th of January, 1889, one of my clerks made an attampt to have the shares transferred on the books of the company into the name of one of the partners in Rudge & Co., but I cannot say in what person on behalf of the company the attempt was made. The grounds of my belief are that I was in communication with the stock jobber, and that I sold the ten shares to see whether they were in order that I might sell the bigger amount. My information as to the value of the shares in the Eastern Oregon Gold Mining Company is obtained from the sale of the ten shares on the 10th of January, 1889, at ten pounds; which shares were represented by share certificates, and I believed there was a market for the said shares in Paris. The only sale of which I have any knowledge was the sale of the ten shares to Rudge & Co., on the 10th of January, 1889, for ten pounds; which shares were represented by share certificates. I have personal knowledge of the sale of the ten shares as mentioned in my last answer, and the sale of the shares of which I have knowledge was of shares represented by ordinary registered certificates. I have no knowledge as to whether the shares of the Eastern Oregon Gold Mining Company are now or ever were listed on the London stock exchange. I have no personal knowledge as to whether any money was paid or tendered on account of the sale of said shares."

Upon the reading of said deposition, counsel for defendant moved the court that so much of the evidence of the witness as was based upon hearsay be stricken out and withdrawn from the jury, the same being incompetent. The court overruled and denied said motion; to which action of the court defendant, by his
47 attorneys, then and there duly excepted, and the exception is allowed.

The deposition of JAMES TYHURST was in substance as follows:

"My name is James Tyhurst; age, 25; reside at Founders' Court, London; am chief clerk to Brown, Shipley & Company; was such in the months of December, 1888, and January and February, 1889. During that time there was placed in the hands of Brown, Shipley & Co. for sale six thousand shares in the Eastern Oregon Gold Mining

Company, standing in the name of Isaac Kaufman, by James W. Going. The disposal of said shares was placed in my charge principally. I attempted to dispose of said shares, but before taking active steps to sell I submitted the power of attorney from Isaac Kaufman and other documents received from James Going to the Eastern Oregon Gold Mining Company, who said they were in order, but that they would not pass any transfer of the Kauffman shares until some question of a United States patent between Kauffman and the company was settled. I received from Going a power of attorney signed by Isaac Kauffman, authorizing a transfer of said shares. I demanded a transfer and it was refused. The reason given by the company was that there was a question of some United States patent pending between themselves and Kauffman. The demand for the transfer was made, I believe, on the 1st day of December, 1888.

"Our brokers, Spurling and Skinner, on the 1st day of December, 1888, presented the power of attorney from Isaac Kauffman to the Eastern Oregon Gold Mining Company, and the company
48 some days later pronounced the same to be regular. The answer of the company was given to me verbally through Spurling and Skinner. I received no letter from the company giving their reasons for not transferring the shares. The company stated they declined to transfer said shares on the ground that Kauffman had not secured a certain patent which he had agreed to secure, and declared that no transfers would be made of such shares until such patents were secured. The value of such shares during *of* December, 1888, and January and February, 1889, was from twenty to twenty-five shillings per share. On the 12th of December, 1888, they were quoted at from twenty to twenty-five shillings per share. If the transfer of said shares could have been secured in accordance with the power of attorney, I think it is not improbable that I could have succeeded in selling the whole block of shares at the rate quoted on the stock board in London. On the 12th of January, 1889, I sold ten of said shares, as a trial, at, I believe, a a pound a share, such sales subsequently becoming void on the refusal of the company to recognize the aforesaid power of attorney. We, Brown, Shipley & Company, sold the whole of the six thousand shares between the 19th and 21st of February, 1889, for a lump sum of five thousand dollars to W. E. Parsons. Such sale was made at private sale by arrangements between ourselves and Parsons. I believe the person who purchased said shares was a director of the Eastern Oregon Gold Mining Company."

On cross-examination the witness testifies as follows:

"Our books show that the power of attorney and other documents received from James W. Going were lodged with and have not been returned by the Eastern Oregon Gold Mining
49 Company, and they are not therefor- in our possession. I have no recollection as to the contents, conditions, or limitations contained in the said power of attorney. On the 1st of December, 1888, the power of attorney was shown to said company

and a demand made upon them for the transfer of said shares. The demand was made by our brokers, who were acting for us in the matter, and I have no personal recollection of the details referred to, except that the date was the 1st of December, 1888. I did not present the power of attorney personally, and therefore no conversation took place between us in the matter.

"The quotations as to the value of the stock were obtained entirely through our brokers to dispose of the whole of said shares. I have no personal knowledge as to any sales of shares in the Eastern Oregon Gold Mining Company, excepting the sale of the six thousand shares to W. E. Parsons and the test sale of ten shares to Spurling and Skinner. The shares sold by me were represented by registered share certificates, for otherwise no power of attorney would have been required. I am not a member of the London stock exchange now."

Attorneys for defendant move the court to strike out all of the evidence of said witness touching the value of shares and other transactions as is based upon hearsay or declarations made by others, and that the same be withdrawn from the jury. The court overruled the motion; defendant excepted thereto, and its exception was duly allowed.

The deposition of JAMES SKINNER, Jr., was in substance as follows:

"My name is James Skinner; age, 38, and I reside at 2 50 Tokenhouse buildings, Southburg; by occupation I am a stock broker, and am a member of the firm of Spurling and Skinner. I was engaged as stock broker in the months of December, 1888, and January and February, 1889. During that period the firm of Spurling and Skinner acted as brokers for Brown, Shipley & Co. Six thousand shares of the Eastern Oregon Gold Mining Company were placed in our hands for disposal by Brown, Shipley & Co. During that time, I believe, the shares stood in the name of Isaac Kauffman. Our firm lodged the power of attorney dealing with the shares with the Eastern Oregon Gold Mining Company, and were told that the power of attorney was in order. I then sold ten shares in the market at one pound per share to Rudge & Co., and conditionally on their being passed by the company. The skares were put into the hands of Wilkinson, a partner in the firm of Rudge & Company, and lodged by them for registration at the Eastern Oregon Gold Mining Company's office, who refused to pass the transfer. We delivered the transfer deed to the buyer and certificate."

On cross-examination JAMES SKINNER, Jr., testified in substance as follows:

"I cannot give the exact day of the week or month in which the shares were so placed in our hands. I cannot say how long we held the same. The registered owner of the said shares was Isaac Kauffman at the time they were placed in our hands and while we held

the same. The shares were ordinary shares, and were represented by registered share certificates. No money changed hands, as the jobber waited for the transfer to be passed before paying, and the transfer was refused by the company. A clerk was sent to
51 the office of the Eastern Oregon Gold Mining Company several times to ask if the shares had been transferred, as if they had been transferred we should have proceeded to negotiate the sale of the remainder of the six thousand shares. We requested that the transfer should be made to Henry Wilkenson, of Rudge and Company. He was in treaty with another man with the object of buying the six thousand shares at, I believe, one pound per share.

"The price quoted to me in the market by a dealer was one pound to 1¼ pound per share, and ten shares, as above mentioned, at one pound per share. I cannot give the value of the said shares for every day during the said three months, except on the day on which I sold the 10 shares, namely, the 12th of January, 1889.

"The only record to which I refer is my share book, which shows the entry of the transaction relating to the said ten shares, and I have personal knowledge only of that sale."

C. S. MILLER was thereupon called and, being duly sworn, testified in substance as follows:

"I was the owner of six thousand shares in certificates of the Eastern Oregon Gold and Silver Mining Company. I think it was in September, 1881, I got the certificates from Mr. Isaac Kauffman, of this city, who transferred them to me by endorsing his name on the back of the certificate."

Whereupon attorneys for defendant objected to the testimony of the witness to the fact of the transfer or endorsement on the back of the certificate or to the execution of any power of attorney, claimed to have been made by Isaac Kauffman authorizing such transfer, on the ground that it is not the best evidence, and that the endorsement itself is the best evidence.

52 Counsel for plaintiff here claim that defendant had been served with a notice to produce a power of attorney.

Whereupon the attorneys for plaintiff then made oral demand that the defendant produce a power of attorney authorizing the transfer of said stock executed by Isaac Kauffman to the plaintiff or to some persons in his behalf; to this demand the attorneys for defendant announce their inability to comply therewith.

Whereupon the court overruled the objection made by defendant to oral testimony on that subject, and directed that the witness be permitted to testify to the substance of the endorsement claimed to have been made upon said certificate of stock and the execution of the power of attorney claimed to have been made by Isaac Kauffman with relation thereto.

To which ruling of the court attorneys for defendant then and there duly excepted, and said exception was by the court allowed.

Thereupon the witness proceeded to testify as follows:

"They were certificates of 100 shares, each fully paid up and un-

assessable, made out in the name of Isaac Kauffman. Isaac Kauffman endorsed his name on the back of the certificates. I then sent the shares over to London, and being desirous of selling them I sent them over to the office of the company to be transferred, and they refused to transfer them on the ground that they were not properly transferred in accordance with the rules and regulations of the company. I was advised that a power of attorney from Mr. Kauffman would be necessary to have these shares transferred. I then set to work to procure this power of attorney from Mr. Kauffman
53 and sent it over there. This power of attorney was presented to the company and they pronounced it regular. They did not register the transfer."

Whereupon the attorneys for the plaintiff put to the witness the following question:

"You may state now the contents of that power of attorney as near as you can remember it."

The witness proceeded to answer the question as follows:

"I wrote the power of attorney myself and my recollection is pretty distinct about it. As near as I can recollect, it was a declaration; it first started out in this form: Appointing a certain party by the name of Going as attorney-in-fact, and to set out the declaration that he had sold and delivered to me at a certain time, giving the date, or to the holder, my name was not mentioned—he did not know who had them and it wasn't intended that he should know—a certain number of certificates—they were numbered so that there could be no mistake about it; that he, by signing his name on the back of the certificates, believed at that time that that was all that was necessary to make a good transfer of title; that that was the usual form, because there was no printing, only his name was just signed on the back; and then he goes on and makes declarations that he appointed so and so his attorney-in-fact, referring to Mr. Kauffman. Mr. Kauffman recites that he authorizes J. W. Going to write over his signature or to cause to be written over his signature such writing as was necessary to make this a legal transfer. That was about the substance; only I remember that the power of attorney had also the power of substitution."

54 "In the next place, news came back that they refused to transfer; this was some time in December. As soon as they refused this transfer this telegram came from Brown, Shipley & Co. I ordered them sold; some of them were sold. I had advices that there was some of the stock sold. I was finally compelled to sell. They were sold at one thousand pounds sterling—for what was intended to be five thousand dollars ($5,000) in cash. I realized four thousand nine hundred and thirty-three dollars ($4,933) and some cents. It was intended it should bring me five thousand dollars ($5,000)."

Whereupon the following question was put to the witness by attorney for plaintiff:

"Q. State whether or not at that time your condition was such that you were compelled to sell that stock."

This was objected to by attorneys for defendant on the ground that it was incompetent, irrelevant, and immaterial.

The objection was overruled and defendant excepts.

The witness answered:

"I was compelled to sell it. My financial condition was such that I had to sell it."

Upon cross-examination the witness testified as follows:

"The power of attorney was made to James W. Going; it was not made to Brown, Shipley & Co. I did not send these shares to England myself. I was never in England. What I have testified to in regard to what was done over there come to me through my agent, who was acting for me in selling the shares. I have no personal knowledge except from information I got in that way from my agent."

Whereupon attorneys for defendant exhibit to witness a "paper purporting to be a blank certificate of shares in the Eastern
55 Oregon Gold Mining Company," and asked the witness "if the certificates spoken of by him were the same kind as that so exhibited," and the witness answered "that it was similar; it looked like it. All I remember on the back of the certificate was the name of Isaac Kauffman; that was all, I think, that was on the back."

Whereupon attorneys for defendant offered the certificate referred to in evidence.

Attorneys for plaintiff object to the same as incompetent.

The court sustained said objection and duly allowed defendant an exception to the action of the court.

The paper referred to was then marked by the reporter for identification, and the paper was offered and identified as in words and figures as follows, to wit:

"No. 498. — shares.

"The Eastern Oregon Gold Mining Company, Limited. Incorporated under the companies acts, 1862 to 1883. Capital, $250,000, divided into 250,000 shares of £1 each.

"This is to certify that —— ——, of ——, is the proprietor of —— shares of £1 each, numbered —— to ——, inclusive, in the Eastern Oregon Gold Mining Company, Limited, subject to the articles of association and rules and regulations of the said company, and that there has been paid in respect of each of such shares the sum of ——.

56 "Given under the common seal of the said company this — day of ——, 188–.

"—— ——,
"—— ——,
"*Directors.*

"—— ——, *Secretary.*

"No transfer of the whole or any portion of these shares can be registered unless accompanied by this certificate."

"I ordered the sale that is set up in the complaint with the balance of this stock and have received the cash for the sale. I have never attempted to rescind this sale or do anything about it since that time. It was sold to the directors of the company. I did not know it at the time it was sold; I found it out afterwards. It was bought by the directors of the company. Since I heard it was sold to the company or the directors of the company, I have not attempted to rescind the sale."

ROBERT EDWARD THOMPSON was called as a witness for the plaintiff and, after being duly sworn, testified as follows:

"I was in London from February until the latter part of June, 1889, making various negotiations for Bourne. I had a number of shares of stock of the Eastern Oregon Gold Mining Company, Limited, to sell."

Whereupon attorneys for plaintiff put to the witness the following question:

"You may state, if you know, what was the value of the shares of the Eastern Oregon Gold Mining Company, Limited, during that period for paid-up stock."

57 To which question and testimony, sought to be adduced thereby, defendant, by its attorneys, object- as immaterial.

The objection was overruled and an exception taken by defendant and duly allowed.

The witness answered: "Well, during the first part of the time I was in London I was not doing anything with that particular mine; but on April 6th I sold some at thirty-six (36) francs, and sold some more on the 8th of April. That would be seven dollars and sixty cents ($7.60) per share. I refer to the ordinary registered share in the Eastern Oregon Gold Mining Company, Limited. I made another sale—I bought some on May 30th. I do not know of any other sales being made. I bought some on May 30th at thirty-six (36) francs; some more at thirty-three (33)."

On cross-examination the witness said:

"I sold some shares at thirty-six (36) francs. I believe it was sold at Antwerp."

Q. "Was the stock sold in the London market?"

A. "It was sold there in the London market."

Q. "Where was the real transaction had?"

A. "I cannot tell you, the broker did that. I had nothing to do with it. As a matter of fact, I believe the buyer bought through a London broker. The transaction took place between the two London brokers. The London market gave the rate, say at Antwerp, in that case. These stocks were not saleable in the London market. They were not saleable in London at all. I mean on the regular stock exchange they were not saleable. The basis of the transaction was at Antwerp. They were not listed in London, because,

58 in the examination made by the committee, as I understand, the listing committee would not allow them to be listed because theconcern was considered not reputable."

Whereupon attorneys for defendant moved the court to strike out the testimony of this witness on the grounds that the basis of the action is upon the maket rate of this stock in London and that the testimony should be confined to that market.

The court denied the motion and duly allowed the defendant an exception thereto.

Thereupon plaintiff called as a witness T. J. B. NICHOLSON, who was duly sworn and testified as follows:

"I was in London during the spring and early summer of 1889; was there in the winter of 1888 and 1889. My business in London was stock and share broker. While in London I knew of the corporation known as the Eastern Oregon Gold Mining Company, Limited. The market price of those shares was about thirty-eight (38) francs. I know this by applying to a dealer in those shares."

On cross-examination the witness testified:

"I make the value in francs because it was given to me in francs. The market in London is established by the various markets of the world, and in that case there would be a quotation the same as you have shares in New York."

To the question "What sales are you aware of being made of these shares to which you refer?" the witness answered: "Well, I understood about one thousand shares that I know of being sold about April, 1889. I wasn't an agent or party to the transaction. I knew the man who bought the shares; was
59 not present at the time. I saw the papers after the sale of the six thousand shares. I cannot give the names of the parties to that transaction. I did not see the certificates of stock. I determined the kind of shares that were subject to transfer at that time simply by description made." And to the court the witness said, "That description was Eastern Oregon Gold Mining shares." A pound sterling would be about 4 dollars and eighty-two cents and a franc about twenty cents.

Whereupon attorneys for defendant moved the court to strike out the testimony of this witness on the grounds that the basis of the action is upon the market rate of this stock in London and that the testimony should be confined to that market.

The court denied the motion.

Defendant, by its attorneys, except*ing* to the action of the court, and its exception was allowed.

Here plaintiff rests his case, and attorneys for defendant move the court that plaintiff be nonsuited and take nothing by his action on the ground that the evidence is insufficient to sustain the action.

The court denied and overruled the motion. Defendant duly excepts thereto, and his exception was by the court allowed.

Plaintiff's attorneys here move the court for permission to amend the prayer of their complaint by inserting therein a prayer to recover interest upon an amount of damages claimed by the plaintiff from the time of the refusal of the company to make transfer of the certificates of stock delivered by Kauffman to plaintiff and registered

the same upon the books of said company up to the date of the entry of judgment.

60 The court allowed plaintiff to so amend and increase its demand against defendant; to which action of the court so taken the defendant, by its attorneys, duly except-, and its exception was allowed.

Defendant thereupon introduced a stipulation signed by the attorneys for the respective parties; which stipulation is in words and figures as follows, to wit:

"In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Defendant.

"It is hereby stipulated and agreed by and between the respective parties to the above-entitled action one of the 'articles of association' of defendant above named is as follows:

"The directors may, without assigning any reason, decline to register any transfer of shares made by any member jointly or alone indebted or under any liability to the company.

"It is further stipulated that the defendant did refuse to transfer the shares of stock described in plaintiff's complaint, and that an assignment of said share was demanded of defendant.

"(Signed) JNO. M. GEARIN &
" W. B. GILBERT,
"Attorneys for Plaintiff.
" EMMONS & EMMONS,
"Attorneys for Defendant."

Thereupon defendant rested.

61 The foregoing comprises all the testimony adduced at the trial of said cause.

Thereupon the court proceeded to instruct the jury as follows:

" Charge of the Court.

"GENTLEMEN OF THE JURY: The plaintiff in this case brings an action against the defendant to recover $24,000 damages, which he alleges he has sustained in this wise: That Mr. Kauffman, being the owner of 6,000 shares of the Eastern Oregon Gold Mining Company, the defendant, paid-up shares, given to him in payment or part payment for the mines in question, sold it to Mr. Miller, the plaintiff, and, as an evidence of that, endorsed on the back of the certificate his name; and, in my judgment, and I so charge you, that made him, as between Kauffman and himself or himself and the world, the legal owner of that stock, just the same as if he had endorsed his name on a promissory note, it transferred to him the legal title to that stock. The transfer took place in Oregon and is governed by the laws of Oregon. It does not necessarily follow that that

transfer should be made on the books of the company, because the transfer of stock on the books of the company does not pass the legal title. The title has passed before. It is an evidence; it is security; it is a wise provision to have transfers of stock and the names of stockholders recorded, for various purposes. And a party, although he owns the stock, cannot have the advantage of his name entered in the books of the company as the owner, to let all the world know that he is the owner, unless he complies with the reasonable requirements of the company in reference to the
62 transfers of stock. Nevertheless, he may be the owner of the stock.

"Miller wanted to sell this stock. It appears that he sent it to London for sale, it being still on the company's books in the name of Kauffman; and that they objected that he must have a power of attorney to authorize the execution of it. No objection was made on the ground that Kauffman was indebted or that he was in any way liable to the company. Upon that he forwarded a power of attorney constituting, I believe, Mr. Going his attorney, with power of substitution. The company then objected, and would not enter it in the books of the company, would not transfer it on the books of the company. They made no objection to the form of the instrument—the mode of proceeding—and, as a witness has stated, it was in order. The paper was in order.

"It does not appear that they declined to do it because of some obligation or indebtedness on the part of Kauffman to them, that I can remember. If you remember anything that was said about it, you remember more than I do; but it is immaterial, because if they did refuse on that ground and that was their objection to justify a failure to transfer the stock, they ought to bring testimony to prove that he was indebted to the company.

"By their articles of association No. 6, which is here by the consent of the parties by stipulation, it is provided that the general right and power of a stockholder to assign his stock to whom he shall see proper shall be limited in this respect, that he shall not be under any obligation to the company or indebted to it. In all other cases he is at liberty to do as he pleases, he is under no
63 restraint; if he is indebted to the company or liable to it he shall not do it without their consent. They may object until he makes payments. Of course, if he discharges the indebtedness they have no more power over it. They may agree to take part of the indebtedness and to make arrangements to allow him to transfer, but in every other respect the owner has a right to have the stock transferred on the books of the company. This being an exception to the rule, and is set up by the defendant in his answer as a defense to this action, I think the burden of proof is on them to show that Kauffman did owe the company, and that he came within this exception, and that they had a right to refuse to transfer this stock. It is admitted, so far as there is any proof on the subject, that there was no such indebtedness, and you are not to presume that there was. This stock was issued to Kauffman to pay for the mine—the Monumental mine on two mines; and, as to

that, you cannot infer that the man who sold the mine owed the company, but the contrary of that presumption, if any should exist; but it appears to be a consum-ated transaction. Kauffman sold the mine and the company paid for it with this paid-up stock. There was no ground to presume or assume or suppose that he was under any liability to the company on that ground.

"It has been suggested in your hearing, and was a part of the case commented on by counsel, that there was some kind of an understanding between Kauffman and this company that he was not to dispose of this stock until some one for this company had obtained a patent for this mining land, but who was to obtain it or under what circumstances does not appear. The law of the United States governing the disposition of mining land is
64 that patents for mining land and the occupation of mining land for the purposes of mining *is* confined to citizens of the United States, and therefore this company knew when it made this purchase that it could not obtain a patent from the United States for this land. They may have supposed they could make or they may have had some arrangement with somebody to prosecute the subject and get a patent for the mining claim and convey it to them, but we have no evidence on the subject; we have no evidence that Kauffman was under any obligation to the company, so that matter is altogether out of the case.

"The law is that this was a wrongful act on the part of this company, there being no proof that the case was within the exception that Kauffman owed them anything. The law is, as I give it to you, that this was a wrongful act on the part of this company, and the company is liable for whatever injury was thereby sustained by Miller.

"He claims that this stock was worth at the time one pound in the market of London, and that he lost the whole of it except $6,000; that he was compelled by his necessity, his poverty, to put it on the market, and it was bought by some one, of course he don't know who, as it was all done by brokers, who turned out to be one or two directors of the company, who had undertaken by this means to get this property at that low figure or at least — than it was worth.

"The burden of proof is upon the plaintiff to show you what his loss is. You cannot assume it, guess at it, nor suppose it. He should show what the reasonable value of the stock is by evi-
65 dence to your satisfaction. He claims in his complaint that he lost one pound on each share of stock, less $6,000 that he got, or that he lost in all $24,000.

"Now, the market value is a peculiar thing in evidence. You cannot prove market value like you prove many other things. It is a thing you cannot go out and see as you can see an object. It is something which has to be gathered from circumstances, and may be gathered over quite a wide field. I am not prepared to say but that even in this case he may have gone over a year's time and given proof on that subject, you being the final judges; but it has been confined to the year 1889, and, I think the proof is, to the months of April and May. They bring evidence here, a broker, a

person engaged in this business, who said that this stock was quoted at a pound a share, and that it was bought and sold by some of them at 37 francs and 36 francs, a franc being about twenty cents.

"It is said that the market by which the plaintiff's loss is to be measured is the London market. Well, that is true in one sense, and not in another; but it may be assumed without question that the London market is the market in this case and he will accept it. All the sales and all the transactions that have been referred to took place in London. It is the London market.

"Because A, a broker, buys of B, a broker, a share of this stock for a man in Antwerp, New York, or anywhere else, that don't make it not bought and sold in London market. It is bought and sold in the London market. A man living in New York may have more interest in or he may have a better opinion of this stock than a man living in London and may be willing to give more for the
66 stock; but this stock was in the hands of a broker to be sold in London. It was a London transaction. The only question for you in this case is the measure of damages—that is, upon the facts submitted the right of the plaintiff to recover is undoubted. It is left for you to say what his loss is, and you will arrive at that by ascertaining what his stock was worth at the time this defendant refused to transfer it upon the books. The wrong, in contemplation of law, was then accomplished.

"I have some trouble in my own mind about the rate of interest, and if you find any judgment for the plaintiff, and of course you must find some damages, you will add to it the interest from the time of their refusal at the rate of eight per cent., the interest in Oregon, and your verdict in that respect may be amended afterwards by striking out what exceeds the rate of interest in London.

"Take the case then, gentlemen, and determine the question of fact in it by your verdict."

The following exceptions to the charge of the court were then and there taken by the defendant, by its attorneys, and by the court allowed:

1. To that portion of the charge in reference to the allowance of interest on the sum sued for.

2. To so much of the instructions as hold that the legal title to the stock was in Miller, and that he might transfer it to any other person without any transfer being made upon the books of the company.

3. To the instruction that the reason for the refusal of the company to transfer the stock, if any reason was given, was immaterial
67 in this case, and that it made no difference whether this reason was given or not given, and to the instruction that the burden of proof was on the defendant to show that the stock fell within the exception or provision of the company's by-laws.

4. To the instruction that there was no evidence that Kauffman was under any liability to the company.

5. To the instruction that the law is that the refusal of the company to transfer the stock on its books constituted a wrongful action

on the part of the company under the circumstances shown in that case.

The jury retire, and in due time return into court with the verdict, which is in words and figures as follows, to wit:

"We, the jury in the above-entitled cause, find for the plaintiff and assess his damages at twenty-four thousand dollars ($24,000), together with legal interest thereon at eight (8) per cent. per annum from the 29th day of February, 1889.

(Signed) SAMUEL HEITSHU, *Foreman.*"

——— ———,

Attorneys for Defendant.

In testimony whereof I have hereunto signed my name this October 9, 1890.

(Signed) MATTHEW P. DEADY,
District Judge.

Endorsed: Filed July 31, 1890. R. H. Lamson, clerk. Filed October 9, 1890. R. H. Lamson, clerk.

68 And afterwards, to wit, on the 17th day of June, 1891, there was duly filed in said court an assignment of errors in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING CO., LIMITED, Defendant.

Comes now the defendant above named, by Emmons & Emmons and Frank V. Drake, its attorneys, and says—

That there is a manifest error in the record and proceedings had and taken in the above-entitled action in the above-named court in this, to wit:

(1.) The court erred in refusing and denying defendant's motion to set aside the service of the summons in said cause, for that defendant was a foreign corporation; that the alleged cause of action arose out of the jurisdiction of said court, and that defendant was not at any time an inhabitant of the district in which said court was held.

(2.) The court erred in sustaining the demurrer to defendant's plea in abatement of said action, for that the facts in said plea pleaded disclosed that defendant was not at any time an inhabitant or resident of the district in which said court was held, and that said defendant was a foreign corporation of England, having its principal place of business in London.

(3.) The court erred in refusing to dismiss said action as
69 prayed by defendant in its plea aforesaid, for that defendant at all times was a foreign corporation, having its principal place of business in London, England; that it was neither a resident or inhabitant of said district, and that the alleged cause of action arose without the jurisdiction of said court.

(4.) At the trial of said cause the court erred in admitting the testimony of plaintiff as a witness in his own behalf, setting forth his financial condition in the question and answer as follows: "Q. State whether or not at that time your condition was such that you were compelled to sell that stock," and the answer, "I was compelled to sell it; my financial condition was such that I had to sell it." To the introduction of which testimony defendant objected and was by the court allowed an exception.

(5.) The court erred in permitting plaintiff to prove the value of shares of the defendant's capital stock sold in the markets of Paris and Antwerp, the substance of the whole testimony as to the value of the shares of the stock of the company being addressed to and confined to said Paris and Antwerp, and in that it was not shown that the defendant was in default in any matters in that behalf, and in that it was not shown that the plaintiff sought to sell the certificates of shares held by him in said-named markets or in any market.

(6.) The court erred in denying and refusing the motion of the defendant, made at the trial and at the close of the testimony for plaintiff in the cause, that plaintiff be nonsuited and take nothing by his action, for that there was no testimony tending to prove that defendant had converted any of the certificates of stock theretofore or then held or owned by plaintiff or that defendant had in
70 anywise interfered with his possession or control of the said certificates of stock, and that the evidence was insufficient to sustain the action.

(7.) The court erred in instructing the jury as follows: "The law is that the refusal of the company to transfer the stock on its books constituted a wrongful action on the part of the company under the circumstances shown in this case," for that said instructions were not applicable to the cause or the facts produced at the trial and tended to mislead the jury; further, the defendant was not charged in the complaint with any liability based upon or arising out of any refusal of the company to transfer the stock on its books or charging the company with a liability as for conversion of any portion of the stock or certificates of stock mentioned in the complaint as being owned or held by plaintiff.

(8.) The court erred in entering judgment for plaintiff in any sum whatever or at all, for that the evidence is insufficient to justify the verdict rendered by the jury, insufficient to sustain the judgment against defendant in any sum whatever; that the complaint and the evidence did not disclose facts sufficient to sustain the action or any judgment for plaintiff therein. There was no evidence tending to sustain the allegation of the complaint that either the company or any officer thereof assailed or in anywise slandered plaintiff's title to the certificates of stock held by him, or denied his ownership thereof, or reported any facts to any person whereby plaintiff was prevented from selling his said shares of stock at their full value. Plaintiff did not offer proof of any attempt on his part to sell the shares held by him in markets where such shares were by plaintiff proven to be saleable.

71 (9.) The court erred in retaining jurisdiction of said cause;

erred in entering any judgment in favor of plaintiff therein; erred in refusing to dismiss said action for that under defendant's objection in said cause taken and entered in said cause the jurisdiction of the court over the cause and over the defendant ceased for all purposes other than the entry of a proper order for dismissal of the cause.

And the said Eastern Oregon Gold Mining Company, Limited, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it has lost by occasion of the said judgment.

FRANK V. DRAKE,
Of Att'ys for Def't.

Endorsed: Filed June 17, 1891. R. H. Lamson, clerk.

And afterwards, to wit, on the 18th day of June, 1891, there was duly filed in said court a petition for writ of error and order allowing the same in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING CO., LIMITED, Defendant.

To the honorable judges of the above-named court:

The defendant above named, your petitioner, presents herewith its bond, assignment of errors, and thereupon and on the record in said cause humbly prays an order that a writ of error to
72 the Supreme Court of the United States be granted herein on its behalf.

FRANK V. DRAKE,
Of Attorneys for Defendant.

THE DISTRICT OF OREGON, *ss:*

Upon the record in said cause and upon petition and bond therefor, the writ of error is allowed as prayed for in the foregoing petition.

Dated June 18, 1891.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed June 18, 1891. R. H. Lamson, clerk.

And afterwards, to wit, on the 18th day of June, 1891, there was duly filed in said court a bond on writ of error in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

C. S. MILLER, Plaintiff,
vs.
THE EASTERN OREGON GOLD MINING COMPANY, LIMITED, Def't.

KNOW all men by these presents that we, D. P. Thompson and R. L. Durham, both residents of Portland, Oregon, are held and firmly bound unto C. S. Miller, of said State, in the sum of five hundred dollars, to be paid to the said C. S. Miller, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated June 17, 1891.

73 Whereas the above-named The Eastern Oregon Gold Mining Company (Limited) have sued out or are about to sue out a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named The Eastern Oregon Gold Mining Company, Limited, shall prosecute said writ of error to effect and answer all costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise to remain in full force and virtue.

D. P. THOMPSON. [SEAL.]
R. L. DURHAM. [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. L. BICKEL.
FRANK V. DRAKE.

UNITED STATES OF AMERICA, *District of Oregon*, } *ss:*

I, R. L. Durham, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of fifteen hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

R. L. DURHAM.

Subscribed and sworn to before me this June 17, 1891.
[SEAL.] GEO. L. BICKEL,
Notary Public in and for State of Oregon.

Approved:
DEADY, *J.*

UNITED STATES OF AMERICA, *District of Oregon*, } *ss:*

I, D. P. Thompson, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and

householder within said district, and that I am worth in
74 property situated therein the sum of fifteen hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

D. P. THOMPSON.

Subscribed and sworn to before me this June 17, 1891.

[SEAL.] GEO. L. BICKEL,
Notary Public in and for State of Oregon.

Approved:
DEADY, *J.*

Endorsed: Filed June 18, 1891. R. H. Lamson, clerk.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify the foregoing pages, numbered 1 to 73, inclusive, to be a true and complete transcript of the record and proceedings in a certain cause lately determined in said court, wherein Charles S. Miller was plaintiff and The Eastern Oregon Gold Mining Company, Limited, was defendant, as the same appears from the records and files of said court now in my office and custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Portland, in said district, this twenty-fifth day of June, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON,
Clerk of said Court,
By R. B. LAMSON,
Deputy Clerk.

Endorsed on cover: Case No. 14,769. Oregon C. C. U. S. No. 1295. The Eastern Oregon Gold Mining Company, Limited, plaintiff in error, *vs.* C. S. Miller. Filed July 24, 1891.